

REMARKS

The Applicants thank the Examiner for the thorough consideration given the present application. Claims 1-15 are pending. Claim 1 is amended, and claims 11-15 are added. Claims 1, 13 and 15 are independent. The Examiner is respectfully requested to reconsider the rejections in view of the amendments and remarks set forth herein.

Interview with Examiner

An interview was conducted with the Examiner in charge of the above-identified application on October 11, 2006. Applicant's representative appreciated the courtesy shown by the Examiner during the interview.

In the interview with the Examiner, the Ennis reference was discussed with regard to previously presented independent claim 1. It was explained to the Examiner that the brush of Ennis cannot swivel to a substantially horizontal orientation as in the present invention. The Examiner indicated that the description in the specification of Ennis that indicates that the brush of Ennis can "tilt to swing in any direction upon engagement with the surfaces of the vehicle" is sufficient to teach the capability of the Ennis brush swiveling to a substantially horizontal orientation. Applicants completely disagree with the Examiner for the reasons that will be mentioned hereinbelow. However, in order to expedite prosecution of the present application, independent claim 1 has been amended to further define the present invention over Ennis.

Reasons for Entry of Amendments

At the outset, it is respectfully requested that this Amendment be entered into the Official File in view of the fact that the amendments to the claims automatically place the application in condition for allowance.

In the alternative, if the Examiner does not agree that this application is in condition for allowance, it is respectfully requested that this Amendment be entered for the purpose of appeal. This Amendment was not presented at an earlier date in view of the fact that the Applicants did not fully appreciate the Examiner's position until the Final Office Action was reviewed.

Acknowledgement of Information Disclosure Statement

The Examiner has not acknowledged the Information Disclosure Statement (IDS) filed on May 10, 2006. It is respectfully requested that the Examiner initial the PTO/SB/08 form attached to this IDS and forward an initialed copy with the next Official Communication to indicate consideration of the references listed thereon.

Rejection Under 35 U.S.C. §102(b) and §103(a)

Claims 1-8 and 10 stand rejected under 35 U.S.C. §102(b) as being anticipated by Ennis, U.S. Patent No. 4,354,291. Claim 9 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Ennis in view of Korfgan, U.S. Patent No. 4,614,449. These rejections are respectfully traversed.

The present invention is directed to a brushing device for brushing livestock. Independent claim 1 recites a combination of elements including “an oblong brush that can be set in motion by a driving means, said oblong brush having a shaft and brush hairs projecting substantially radially therefrom when the oblong brush is not being driven by the driving means.” In addition, independent claim 1 recites “wherein the at least one flexible element of the carrying means, through a force acting externally thereupon, permits a swiveling of the brush to a substantially horizontal orientation of said brush for reaching higher-up surfaces of the animal.” Applicants respectfully submit that the Ennis reference relied on by the Examiner fails to teach or suggest the present invention as recited in independent claim 1.

It should be noted that support for the above-mentioned amendment to independent claim 1 can be found in the specification at page 3, lines 27-32, and page 4, lines 17-20. This orientation of the brush hairs is necessary for a brushing device to be used to brush livestock. A livestock brush must have sufficient rigidity to properly clean an animal. The brushes of Ennis do not have such an orientation because the Ennis brushes are not for cleaning livestock. In addition, it would not be obvious to orient the brush hairs of Ennis in such a manner because Ennis teaches away from this orientation.

Specifically, referring to column 5, line 67 through column 6, line 9 of Ennis, it is stated “[t]he brush 48 preferably is of a type having soft bristles which collapse when the brush is not rotating but which expand outwardly during rotation.” Applicant submits that soft, bristles are needed for cleaning a vehicle in order to avoid scratching of the vehicle. In view of this, bristles that project substantially radially from the shaft of the brush as in the presently claimed invention would not be appropriate for the Ennis vehicle washing apparatus.

For at least this reason, Applicant respectfully submits that Ennis fails to anticipate independent claim 1 of the present invention. Reconsideration and withdrawal of the Examiner's rejection under 35 U.S.C. § 102(b) are therefore respectfully requested.

In addition, Applicant submits that Ennis fails to teach or suggest a brush that can swivel to a substantially horizontal orientation as recited in independent claim 1. Figure 2 of Ennis, for example, shows pivoting of the brushes, but not to a substantially horizontal orientation for reaching higher-up surfaces of an animal. The Examiner has taken the position that the Ennis brushes are "capable of swiveling to a substantially horizontal orientation." Applicant respectfully disagrees.

First, the mounting of the cylinder 68 in Ennis would prevent such movement. Specifically, as discussed in the paragraph bridging columns 6 and 7 of Ennis, the cylinder 68 is a shock absorber 68 to regulate and control tilting of the rotating brush 48 "to prevent the brush 48 from swinging or tilting too freely."

Second, the length of the shock absorbers 68 of Ennis is not long enough to allow for swiveling of the brushes to a substantially horizontal position.

Third, as disclosed in Ennis at column 2, second and third full paragraphs, the brushes of the Ennis device merely move around front and rear corners and side contours of the vehicle. The shock absorbers 68 of Ennis are provided to absorb shocks that occur when the vehicle contacts the brushes. The contact of the brushes by a vehicle would not permit swiveling of the brushes to a substantially horizontal position. Referring to Figure 1 of Ennis, when a vehicle is moved into engagement with the brushes 48, the force of the vehicle causes the brushes to pivot about the pivot rods 32. In addition, when the vehicle causes a force on the brushes, the shock

absorbers 68 allow for pivoting about the pivot rods 32 well before the shock absorbers 68 will allow pivoting of the brushes. In view of this, no matter how high a force is applied to the brushes of Ennis, the brushes will pivot about the pivot rods 32 to follow the contour of the vehicle. In view of this, it is impossible for the brushes of Ennis to swivel to a substantially horizontal position as in the presently claimed invention.

With regard to the Examiner's position in the interview that the discussion in Ennis that the brushes can "tilt to swing in any direction upon engagement with the surfaces of the vehicle," Applicant submits that this disclosure does not mean that the brushes of Ennis can swivel to a substantially horizontal position. This only means that the brushes of Ennis can follow the contours of the vehicle while keeping its generally vertical orientation. As can be seen in Figure 2 of Ennis, for example, the brushes of Ennis do not swivel to a substantially horizontal orientation during ordinary operation of the Ennis vehicle washing device. In addition, for the above explained reasons, it would not be possible to swivel the brushes of Ennis to a substantially horizontal orientation. Therefore, Ennis fails to anticipate independent claim 1 of the present invention.

In view of the above, Applicants respectfully submit that the Ennis brushes are not "capable of" swiveling to a horizontal position as asserted by the Examiner. Therefore, Ennis fails to anticipate independent claim 1 of the present invention for this additional reason. Reconsideration and withdrawal of the Examiner's rejection under 35 U.S.C. § 102(b) are therefore respectfully requested.

With regard to dependent claims 2-10, Applicants submit that these claims are allowable due to their dependence on independent claim 1 as well as due to the additional recitations in these claims.

With regard to the Examiner's reliance on the Korfen reference, this reference fails to suggest modification of Ennis to arrive at the presently claimed invention. Therefore, this reference fails to make up for the deficiencies of Ennis.

In view of the above amendments and remarks, Applicant respectfully submits that claims 1-10 clearly define the present invention over the references relied on by the Examiner. Reconsideration and withdrawal of the Examiner's rejections under 35 U.S.C. § 102 and 103 are therefore respectfully requested.

Additional Claims

Additional claims 11-15 have been added for the Examiner's consideration. Applicants respectfully submit that independent claims 13 and 15 are allowable over the references relied on by the Examiner due to the recitation of the brush being capable of swiveling to a substantially horizontal orientation. In addition, independent claim 13 recites "said at least one flexible element being fixed directly to a rigid, non-movable structure" and independent claim 15 recites "wherein the oblong brush of the brushing device consists of a single brush." Applicants respectfully submit that these recitations are not disclosed by Ennis. Ennis discloses a flexible element that is supported to a movable support arm 46. In addition, Ennis discloses more than one brush. Therefore, independent claims 13 and 15 are allowable for these additional reasons.

Application No. 10/506,781
Amendment dated October 23, 2006
Reply to Office Action of June 23, 2006

Docket No.4452-0150PUS1
Art Unit: 3643
Page 12 of 13

With regard to dependent claims 11, 12 and 14, Applicants respectfully submit that these claims are allowable due to their respective dependence on independent claims 1 and 13, as well as due to the additional recitations in these claims.

Favorable consideration and allowance of additional claims 11-15 are respectfully requested.

CONCLUSION

Since the remaining patents cited by the Examiner have not been utilized to reject claims, but merely to show the state of the art, no comment need be made with respect thereto.

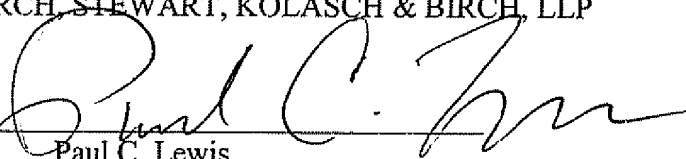
All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. It is believed that a full and complete response has been made to the outstanding Office Action, and that the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone Carl T. Thomsen (Reg. No. 50,786) at (703) 208-4030 (direct line).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,
BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


Paul C. Lewis
Reg. No. 43,368

P. O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

PCL/CTT/cm